

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Lynn E. Koester  
SSN XXX-XX-5801  
Kathleen M. Koester  
SSN XXX-XX-7199

**CASE NO. 04-60714 DDO**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 28, 2004, at 1:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 2, Second Floor of the above entitled Court located at U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 14, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$58,800.00, as evidenced by that certain Promissory Note dated January 13, 2000, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated January 13, 2000, executed by Lynn E. Koester and Kathleen M. Koester, husband and wife as joint tenants, recorded on January 20, 2000, as Document No. 195830, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Douglas County, Minnesota and is legally described as follows to-wit:

South 60 feet of NE 1/4 of Block 7, original townsite of the City of Alexandria, Douglas County, Minnesota, according to the recorded plat thereof filed and of record in the Office of the County Recorder, Douglas County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 7, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$546.03 each; accruing late charges of \$88.28 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 7th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

APR. -29' 03(TUE) 08:06

B&amp;W WESTERN TRUST

TEL:213 955 2494

P.018

LOAN # 0569688

**ADJUSTABLE RATE NOTE**

(LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

January 13, 2000

ALEXANDRIA

Minnesota

(Date)

(City)

910 BRYANT ST, ALEXANDRIA, MN 56308

(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 56,800.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is

**AMERICA'S WHOLESALE LENDER**

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of % 8.625. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on March 1, 2000. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on February 1, 2030, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4500 PARK GRANADA, CALABASAS, CA 91302-1613

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 441.78

This amount may change.

**(C) Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES****(A) Change Dates**

The interest rate I will pay may change on the first day of February, 2002, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before the Change Date is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

MINNESOTA ADJUSTABLE RATE NOTE - LIBOR INDEX - Single Family

© 2000/01/01 (date)

ARM Note

Page 1 of 3

Initials: *AK*  
*AK***EXHIBIT** A

\*23991\*

\*000669688000002D523\*

APR. -29' 03 (TUE) 08:08

B&amp;Y WESTERN TRUST

TEL: 213 955 2494

P. 021

REGISTRATION TAX HEREON NO. 37528  
 OF \$130.64 DOLLARS  
 HAS BEEN PAID  
1-21-2000  
 COUNTERSIGNED: Dieboldt, M.  
 TREASURER, DOUGLAS COUNTY, MINN.  
James  
 AUDITOR, DOUGLAS COUNTY, MINN.

OFFICE OF COUNTY RECORDER } SS  
 County of Douglas, Minn.

I hereby certify that the within instrument  
 was filed in this office for record on the 20<sup>th</sup>  
 day of JAN, 2000 at 9:00  
 o'clock AM and was duly recorded as  
 Doc. No. 195830

Barlene Chermak Recorder  
Quetta Rosa Deputy

WHEN RECORDED MAIL TO:

MSN 8V-78 / DOCUMENT CONTROL DEPT.  
 P.O. BOX 10288  
 VAN NUYS, CALIFORNIA 91410-0288

LOAN #: 0669688

ESCROW/CLOSING #:

SPACE ABOVE FOR RECORDERS USE

DC AC  
 AL 1954**MORTGAGE**

THIS MORTGAGE ("Security Instrument") is given on January 13, 2000. The mortgagor is  
 LYNN E KOESTER. AND KATHLEEN M KOESTER, HUSBAND AND WIFE AS JOINT TENANTS

("Borrower"). This Security Instrument is given to  
 AMERICA'S WHOLESALE LENDER

which is organized and existing under the laws of NEW YORK  
 4500 PARK GRANADA, CALABASAS, CA 91302-1613

and whose address is

("Lender"). Borrower owes Lender the principal sum of  
 FIFTY SIX THOUSAND EIGHT HUNDRED and 00/100

Dollars (U.S. \$ 56,800.00 ). This debt is evidenced by Borrower's note dated the same date as this  
 Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and  
 payable on February 1, 2030 and for interest at the yearly rate of EIGHT & FIVE-EIGHTHS percent.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all  
 renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under  
 paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and  
 agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and  
 convey to Lender, with power of sale, the following described property located in DOUGLAS

County, Minnesota:

SOUTH 60 FEET OF NE 1/4 OF BLOCK 7, ORIGINAL TOWNSITE OF THE CITY OF  
 ALEXANDRIA, DOUGLAS COUNTY, MINNESOTA, ACCORDING TO THE RECORDED PLAT  
 THEREOF FILED AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER,  
 DOUGLAS COUNTY, MINNESOTA.

which has the address of 910 BRYANT ST, ALEXANDRIA

(Street, City)

Minnesota 56308- ("Property Address"):  
 (Zip Code)

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
 A - 6H(MN) (0003) 01 CHL (08/88) VNF MORTGAGE FORMS - (0005) 1-7/01

Initials: L&K Form 3024 8/80  
 Page 1 of 8 Amended 12/88

\*23991\*

TX 27739

\*00066968800000DV2A0\*

**EXHIBIT B**

APR. -29' 03 (TUE) 08:12

B&amp;Y WESTERN TRUST

TEL:213 955 2494

P. 026

LOAN #: 0669608

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

(Check applicable box(es))

- ☒ Adjustable Rate Rider(s)  
☐ Graduated Payment Rider  
☐ Balloon Rider  
☐ VA Rider

- ☐ Condominium Rider  
☐ Planned Unit Development Rider  
☐ Rate Improvement Rider  
☐ Other(s) [specify]

- ☐ 1-4 Family Rider  
☐ Biweekly Payment Rider  
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Lynn E Koester  
 LYNN E KOESTER

(Seal)

-Borrower

Kathleen M Koester  
 KATHLEEN M KOESTER

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

STATE OF MINNESOTA,

Douglas

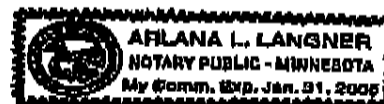
County as:

On this 13th day of January, 2000, before me appeared

Lynn E. Koester and Kathleen M. Koester, husband and wife  
 to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged  
 that they executed the same as their free act and deed.

Notary Public

My Commission Expires:



This instrument was drafted by T. BEBUS  
 of AMERICA'S WHOLESALE LENDER  
 9800 SHELARD PKWY #120, PLYMOUTH, MN 55441.

Tax statements for real property described in this instrument should be sent to:  
 LYNN E KOESTER  
 910 BRYANT ST  
 ALEXANDRIA, MN 56308-

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Lynn E. Koester  
SSN XXX-XX-5801  
Kathleen M. Koester  
SSN XXX-XX-7199

**CASE NO. 04-60714 DDO**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 7, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$546.03 each; accruing late charges of \$88.28 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to a mortgage in favor of Celine in excess of \$10,000.00.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty.

S.D.N.Y., 1986).

### **CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 7th day of September, 2004.

### **WILFORD & GESKE**

By /s/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

**CHAPTER 13 CASE**

**CASE NO. 04-60714 DDO**

Lynn E. Koester  
SSN XXX-XX-5801  
Kathleen M. Koester  
SSN XXX-XX-7199

**AFFIDAVIT OF  
NANETTE PRINS**

Debtor.

Nanette Prins, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Countrywide Home Loans, Inc.

2. Countrywide Home Loans, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated January 13, 2000, executed by Lynn E. Koester, and Kathleen M. Koester, husband and wife as joint tenants, recorded January 20, 1999, as Document No. 195830. The property is located in Douglas County, Minnesota and is legally described as follows, to-wit:

South 60 feet of NE 1/4 of Block 7, original townsite of the City of Alexandria, Douglas County, Minnesota, according to the recorded plat thereof filed and of record in the office of the county recorder, Douglas County, Minnesota.

3. That she has reviewed the account records relating to the Koester's mortgage loan, account no. 669688.

4. That as of August 31, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$54,795.80
Interest through August 31, 2004	2,747.52
Attorney's Fees:	700.00
Late Charges:	88.28
Recording Fees:	19.50
Fees Due:	81.25
Escrow Balance:	71.49

**TOTAL:** **\$58,503.84**

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through August, 2004 in the amount of \$546.03 each.

6. This affidavit is given in support of the motion of Countrywide Home Loans, Inc. for relief from the automatic stay.

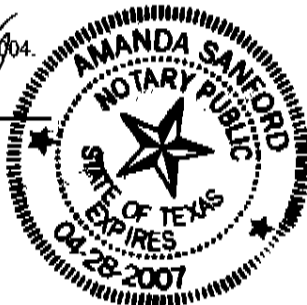
COUNTRYWIDE HOME LOANS, INC.

By

Nanette Prins  
Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 1 day of September, 2004.

Amanda Sanford  
Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Lynn E. Koester  
SSN XXX-XX-5801  
Kathleen M. Koester  
SSN XXX-XX-7199

**CASE NO. 04-60714 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 7, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Nanette Prins, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Lynn E. Koester  
Kathleen M. Koester  
910 Bryant Street  
Alexandria, MN 56308

Michael J. Farrell  
PO Box 519  
Barnesville, MN 56514

Logan Moore  
1118 Broadway  
Alexandria, MN 56308

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Celink  
PO Box 5500  
Detroit, MI 48255

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 7th day of September, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

\_\_\_\_\_  
In Re:

**CHAPTER 13 CASE**

Lynn E. Koester  
SSN XXX-XX-5801  
Kathleen M. Koester  
SSN XXX-XX-7199

**CASE NO. 04-60714 DDO**

Debtor.

**ORDER**

\_\_\_\_\_  
The above entitled matter came on for hearing upon motion of Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 28, 2004, at U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated January 13, 2000, executed by Lynn E. Koester and Kathleen M. Koester, husband and wife as joint tenants, recorded on January 20, 2000, as Document No. 195830 covering real estate located in Douglas County, Minnesota, legally described as follows, to-wit:

South 60 feet of NE 1/4 of Block 7, original townsite of the City of Alexandria, Douglas County, Minnesota, according to the recorded plat thereof filed and of record in the Office of the County Recorder, Douglas County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court